

**Harpswell Planning Board Meeting  
Minutes of August 20, 2003**

**Approved 9-17-03  
page 1 of six**

**Attendance:** Sam Alexander - Chairman, John Papacosma -Vice-Chairman, Don Rogers, Dorothy D. Carrier, Howard Nannen, Richard Carignan - Associate, Roland Weeman - Associate, Noel Musson - Planner, and Karen O'Connell - Recording Secretary.

**Introductions and Pledge of Allegiance** - The meeting had been advertised in the Times Record and was videotaped, broadcast live on Harpswell TV and recorded. Chairman Alexander called the meeting to order at 6:30 P.M., introduced above Board members and staff and led the pledge of allegiance.

**Review of Agenda and Procedure -**

Chairman Alexander reviewed general Board procedures and the agenda for the evening

**Approval of Minutes -**

**Motion - The minutes of July 16, 2003 were accepted as printed ( Motion by Alexander and seconded by Papacosma - Carried 4-0 with Carrier abstaining as she was not present at the meeting.**

**Site Visits Review** - Chairman Alexander reported that site visits to the three areas to be discussed at this evening's meeting had taken place on Monday August 18 with Board members Rogers, Carrier, Papacosma, Carignan and Noel Musson Planner in attendance.

**03-08-01 Brian and Kathleen Kelley, Reconstruction of a Non-Conforming Structure - Remove Existing Structure and replace with new Structure, Shoreland Residential, Tax Map 13-41, Birchmere Ext.**

Applicant Presentation - Brian Kelley, applicant, explained his request to demolish and rebuild a 3 bedroom cottage on the same footprint as the existing cottage and to repair a boathouse on his property.

Board Questions and Discussion - Planner Musson was asked for his comments and he noted that the two things the Board needs to rule on are: (1) whether or not the reconstruction meets the setbacks to the greatest extent possible, (Musson noted the entire structure and lot is non-conforming and any move of the building would make it more non-conforming) and (2) whether or not the repairs to the boat house represents more than 50% of the value of the structure. Musson distributed revised drawings from the applicant's and a real estate estimate of the boat house for the record.

Public Comment - Alexander called for Public Comment on the proposal. There was none at this time.

Board Questions and Discussion Continued - Chairman Alexander confirmed with Kelley that the new foundation for the cottage would be concrete posts elevated 12 to 18 inches above the current level and explained the height increase could not be more than an additional three feet. Alexander confirmed with Kelley that he planned to raise the pitch of the roof line to allow for a 30% volume increase which would be allowed on the same footprint. Alexander asked about the size of the volume increase and Planner Musson noted that the Codes Office had reviewed the volume increase and found it acceptable.

Papacosma raised the issue of using the real estate estimate of value of the boat house in relationship to the property. Dennis Duggan, Realtor with Rob Williams Real Estate, responded that the building itself may have a construction value of approximately \$9,000 and the \$25,000 to \$30,000 estimate provided by the Realtor included the market value that the boat house added to the property.

The Board discussed the following issues: that language in the ordinance dealing with value of the structure; the poor condition of the structure; issues of repair versus maintenance; and applicant's estimate of market value at \$25,000. The Board members concluded that the repairs or reconstruction of the boat house would not constitute 50% of its value. Nannen confirmed with applicant Kelley that he estimated he would not spend more than \$500 on materials to jack up one end of the building and add railings.

Alexander pointed out that any direction you go with the cottage building increases nonconformity of the setbacks. Nannen confirmed the new building was planned to be in exactly the same position and footprint as the current cottage.

Papacosma asked Applicant Kelley when the structure was last occupied and he replied 6 or 7 years ago and noted the structure was in poor condition and water leaks were an issue.

Public Comment - As requested by the Board, three members of the public; Barbara Theberge, Kathleen Kelley and Kathy Leonard, each provided testimony regarding the occupancy and maintenance of building. Musson noted that Section 10.4.2 related to resumption of use prohibited and this section of the ordinance would require that there had been someone at or maintaining the property during the last five years.

Board Discussion and Votes - Alexander reviewed criteria of Section 10.3.2.1 regarding setbacks to the greatest possible extent and made a - **Motion - that where the cottage is sitting is meeting the setbacks to the greatest practical extent and it could not be moved in any direction to improve that. (Motion by Alexander and seconded by Carrier; carried 5-0)**

In discussing the issue of resumption of use prohibited, Musson clarified that Section 10.4.2 applies to non-conforming uses and this is a conforming use and section 10.4.2 does not apply. Nannen indicated he agreed and Alexander also concurred. In order to dispense with this issue Alexander requested a motion. **Motion - The Board finds the applicant has met the requirements of section 10.4.2. regarding resumption of use. (Motion by Nannen and seconded by Alexander who called for a vote but some members did not vote and asked for discussion)** Following Board discussion that this section is not applicable, Nannen and Alexander rescinded the motion and second and declared the vote invalid due to the section not being applicable in this case.

Alexander then asked for a decision on the boat house. Musson reviewed that the Board had discussed that the repair of the boat house was less than 50% of the value. Nannen proposed a **Motion - that the board finds that the value of the repairs to the boat house are less than 50% of the market value and therefore meets the ordinance requirements . (Motion by Nannen and seconded by Alexander).** During discussion of this motion, Carrier raised the issue of unknowns such as more extensive repair being necessary driving costs to over 50%. Kelley indicated in such a case, he would not continue. The Board discussed that the Codes Office would be responsible for review of the site and Musson suggested the Board could place a condition that would limit the extent of the costs of repair. Carrier asked for an amendment to the motion. Kathleen Kelly talked about the possibility of values of the buildings changing particularly once the cottage is replaced. Carignan indicated that if this is repair and maintenance then the issue should not be before the Board per 10.2.2. Following discussion of the issue of repairs and maintenance, versus reconstruction, and because the matter would come back to Codes if there were issues , **the Board then voted 5-0 in favor of the above motion.**

The Board reviewed the criteria of Section 13.4.7. and Chairman Alexander confirmed that the Flood Plain was not an issue as determined by Codes Office. **Motion - the applicant meets the requirements of the Basic Land Use Ordinance 13.4.7 (Motion by Carrier and seconded by Rogers; see vote below)** Chairman Alexander indicated the Kelley's would need to get a permit from the Department of Environmental Protection (DEP) and would get a pamphlet on best practices for erosion control. Mr. Kelley spoke of his thought to place rip rap under one end of the shed when the work is being done and he understood he would need to check with DEP. Kelley indicated he also might remove several small trees.

Public Comment - Susan Harris made comments about concern about the impact of the rip rap on her nearby stairs and she asked how high the building would be and it was confirmed to be seventeen and a half feet. Following discussion, **the Board vote was 5-0 in favor)**

Chairman Alexander advised the Kelley's they would receive legal notification of the approval within a month and anyone has 40 days to appeal.

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**03-08-02 Redfish and Associates (Glen's Lobster - Owner), Site Plan Review - Wharf Approval; Proposed 400 Square Foot Addition to Existing Commercial Dock, Commercial Fishing I, Tax Map 22-54T, Abner Point Rd., Bailey Island**

Don Rogers asked to recuse himself on this matter and Chairman Alexander appointed Carignan as a voting member of the Board in Rogers absence.

Applicants Presentation - Ben Wallace, applicant's representative summarized the request to place an addition on an existing dock due to hazardous conditions. Mr. Wallace added that Mr. Rogers is an abutter on both sides.

Review and Vote on Section 15.3 Shoreland Zoning Criteria - Planner Musson indicated that 15.3.2 and 15.3.5, 6 and 7 may not be applicable as no structure will be built on the dock. Alexander clarified with Wallace that most of the work is above the low tide line.

Papacosma clarified that the pressure treated wood would be used and that arsenic is not in the new pressure treated wood. Wallace expressed his belief that the new pressure treated wood includes copper which he believes could have issues. Nannen asked Wallace to justify the size of the wharf. Wallace indicated it is a safety and efficiency issue due to the increased activity on the dock. Alexander also confirmed the existing wharf is also over 12 feet in width. The Board reviewed the criteria of 15.3. noting that 15.3.1 does not apply as the access already exists. For 15.3.2 Alexander indicated it is not a beach area, for 15.3.3 Alexander noted this is fisheries and a benefit, for 15.3.4 the Board discussed the dock as being squared off for safety issues, and for 15.3.4, 15.3.5, 6 and 7 the Board discussed that no structure is being built or changed so it is not applicable. As a result of the Board's review, Alexander made a **Motion - that the application meets the requirements of Section 15.3 of the Shoreland Zoning Ordinance (Motion by Alexander and Seconded by Papacosma; carried 5-0)**

Review and Vote on Section 15 of Site Plan Review - Planner Musson reviewed his file memo of August 13, 2003 indicating the following sections of the Site Plan Review Ordinance may not be applicable: Section 15.3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 16, 18, 19, and 20. The Board discussed that the applicant had sent letters to check with Maine Historical Commission on archeological resources and to Native American tribes and there is no reference in the Comprehensive Plan regarding this area. As a result of this review Alexander requested a **Motion- that the above sections are not applicable (Motion by Carignan and seconded by Carrier; carried 5-0)** Alexander then referenced the previous review of the Shoreland Zoning Ordinance items which were related to site plan review items 15.1, 15.2, 15.3, 15.4.

Section 15.1 Dimensional Requirements - **Motion - Based on previous review of Section 15.3.4 of the Shoreland Zoning Ordinance, the Board determined that the application meets the requirements of Section 15.1 of Site Plan Review (Motion by Nannen and seconded by Alexander; carried 5-0)**

Section 15.2 Utilization of the Site - Musson indicated use of site was not going to change and Section 15.3 of Shoreland Zoning Ordinance previously approved applied. **Motion -The application meets the requirements of Section 15.2 because the use is Commercial Fishing. (Motion by Alexander and seconded by Nannen; carried 5-0).**

Section 15.10 Erosion Control - Nannen noted there would be no change on the site as the work is over the water. **Motion - the proposal meets the requirements of Section 15.10 (Motion by Nannen and seconded by Carrier; carried 5 - 0)**

Section 15.14 Natural Features and Buffering - Alexander noted that this project would not change anything related to buffering. **Motion - Section 15.14 Natural Features and Buffering does not apply (Motion by Carrier and seconded by Alexander; 5-0)**

Section 15.15 Lighting - Alexander confirmed with Wallace that there would be no new lighting. **Motion- the proposal meets the requirements of Section 15.15 because there will be no change in the lighting. (Motion by Alexander and seconded by Carrier; carried 5-0)** The Board discussed the adequacy of the lighting with Wallace who indicated that it was sufficient.

Section 15.16 Water Quality Protection - Musson clarified an existing fuel pump would be moved back toward a building as mentioned at the site visit. The Board confirmed this would be done by a qualified company and with any necessary permits. **Motion - The application meets requirements of Section 15.16. (Motion by Alexander and seconded by Carignan; carried 5-0)**

Section 15.21 Technical and Financial Capability - The Board discussed the letter received from Gardiner Savings Bank. **Motion - the application meets the requirements of Section 15.21 of Site Plan Review. (Motion by Carrier and seconded by Carignan; carried 5-0)**

Section 13.4.7 of the Basic Land Use Ordinance - Musson indicated the Board may now want to review Section 13.4.7 of the Basic Land Use Ordinance and noted the Board may have already covered these elements by virtue of its previous review and approval of Section 15.3 of the Shoreland Zoning Ordinance and Section 15 of the Site Plan Review Ordinance. **Motion - The application meets the requirements of Section 13.4.7 of the Basic Land Use Ordinance. (Motion by Carignan and seconded by Carrier; carried 5-0).**

**Proposed 12' X30' Commercial Trap Dock with a 3' x32' Seasonal Ramp and 12' x16' Seasonal Float , Shoreland Residential, Tax Map 17-31, Basin Point Wharf.**

Applicant Presentation - Ben Wallace, applicant's representative, described plans to build a wharf for the personal use of the Fishers in commercial lobstering. He noted the purpose of the wharf is for circulation and repair of traps and it is the minimum size for this function. He noted that it is not built for vehicular traffic nor will it be used for storage of gear. Wallace confirmed that the Fishers would be the sole users of this dock. Carrier confirmed with Wallace that there would be no lighting added.

Public Comment - Claire Ellis, a neighbor, commented that she is fisherman friendly, but is very concerned that the basin is not large enough for this project. She asked if the dock was Commercial and if the dock could be resold as a commercial dock. Musson explained that a new Site Plan review would be required if any new owner wished to use this dock which is now only a home occupation. Board members discussed the size of the dock its future uses and size limits.

Applicant Presentation continued - Kathleen Fisher explained that she currently fishes out of a 19 foot skiff and uses a float. She indicated there would be no other boats and the wharf would be 6 feet wider than a typical residential dock. In response to Board member questions regarding the level of water in Basin Cove, Fischer noted that there is low water in front of her cottage and big boats cannot fit at low tide. The proposed float would be just far enough into the water to allow her access at low tide.

Public Comment continued - David Rugar, a neighbor, expressed his concerns about more traffic on the road to the cottage and stated the road leading in is a right of way which he believes is for foot traffic only. He asked about the materials to be used in the project. Ben Wallace responded explaining both pressure treated pilings and hemlock would be used. Rugar asked where the float would be stored. Wallace explained it was a year round float but might be pulled and stored at a boat yard or other location and the ramp would be stored on the dock. Wallace stated that he understood that property issues as raised by Rugar would not be a matter to be settled by the Board. Wallace stated his opinion that the Fischer's would decrease their use of the right of way with this project.

Review of Section 15.3 Harpswell Shoreland Zoning Ordinance -

Musson suggested the Board could review each section and then make a ruling on the set of criteria. Musson also noted that Sections 15.3.5, 6, 7 may also not be applicable as no structure is proposed on the wharf.

Alexander and the Board then reviewed Section 15.3 criteria as follows.

Section 15.3.1 - Alexander noted that the access is mostly over ledge. Wallace testified that there would be no ramp even though he did show one in his plan. **Motion - the access from the shore will be developed on appropriate soils, in this case ledge, and there will be no issue regarding erosion. (Motion by Papacosma and seconded by Alexander; carried 5-0)**

Section 15.3.2 - Alexander noted there is no beach area. **Motion this proposal meets the requirements of 15.3.2 ( Motion by Alexander and seconded by Carignan; carried 5-0)**

Section 15.3.3 - Alexander noted the proposal is a Fishery. **Motion this proposal meets the criteria of 15.3.3. (Motion by Carignan and seconded by Nannen; carried 5-0)**

Section 15.3.4 - Alexander noted from earlier testimony that what is proposed is the existing use and character of the area. **Motion - The application meets the standards of Section 15.3.4 (Motion by Carignan and seconded by Alexander; carried 5-0)**

Sections 15.3.5, 6 and 7 - **Motion - Sections 15.3.5, through 7 are not applicable (Motion by Carrier and seconded by Carignan; carried 5-0)**

Public Comment - Bob Motto of 243 Basin Point Road asked for clarification of the sizes on the new dock and float and this was provided.

Section 15 Site Plan Review Standards -

Musson suggested that several Sections of Section 15 may not be applicable and asked if the Board wanted to dispense with these as set. Musson recommended that items that may not be applicable included 15.6, 7, 8, 11, 12, 13, 15, 17, 18, and 19. Carrier asked about 15.18 and what would occur with the waste resulting from repair and Musson asked that this be removed from the above list so the Board could discuss. **Motion - Sections 15.6, 7, 8, 11, 12, 13, 15, 17, and 19 are not applicable to this application.**

**(Motion by Alexander and seconded by Carignan; carried 5-0)**

Public Comment - David Rugar asked what type of permits were required to work on this project and Chairman Alexander asked Wallace to respond. Wallace replied that for this dock permits are required by the Town of Harpswell, Army Core of Engineers, Department of Environmental Protection and other Departments which have oversight such as Bureau of Public Lands, Endangered Species, Council of Native Americans and others.

Review Continued - Section 15 of the Site Plan Review Standards

15.1 Dimensional Requirements - Musson noted the dimensional requirements were reviewed under Section 15.3.4 of the Shoreland Zoning Ordinance. **Motion - The application meets the requirements of Section 15.1. (Motion by Nannen and seconded by Carignan; carried 5-0)**

15.2 Utilization of the Site - Alexander commented that access is over ledge and there is no ramp from wharf to shore and there will be Department of Environmental Protection and Army Corp of Engineering applications. **Motion -The application meets the requirements of Section 15.2. of the Site Plan Review Standards. (Motion by Carrier and seconded by Carignan; carried 5-0)**

15.3 Adequacy of the Road System - Alexander indicated this was addressed and it is a right of way and there will be no additional traffic beyond what is there already. **Motion - The application meets the requirements of Section 15.3 of the Site Plan Review Standards. (Motion by Carignan and seconded by Papacosma; carried 5-0)**

15.4 Access into the Site - **Motion - The application meets the requirements of Section 15.4 (Motion by Carrier and seconded by Nannen; carried 5 - 0)**

15.5 Access/Egress Way Location and Spacing - Alexander commented that nothing had changed regarding access. **Motion - The application meets the requirements of Section 15.5 of the Site Plan Review. (Motion by Alexander and seconded by Carrier; carried 5-0)**

15.6 Internal Vehicular Circulation - N/A see above.

15.7 Parking - N/A see above.

15.8 Pedestrian Circulation - N/A see above.

15.9 Storm Water Management Alexander noted it did not seem that storm water would change. **Motion - The application meets the requirements of Section 15.9. (Motion by Carignan and seconded by Carrier; carried 5-0)**

15.10 Erosion Control - Alexander indicated the only disturbance might be a thin layer of soil at the top of the embankment by foot traffic but there would be no vehicular access. **Motion - The proposal meets the requirements of Section 15.10. (Motion by Alexander and seconded by Carignan; carried 5-0)**

15.11 Water Supply and Groundwater Protection - N/A see above.

15.12 Subsurface Waste Disposal - N/A see above.

15.13 Utilities and Essential Services - N/A see above.

15.14 Natural Features and Buffering - Chairman Alexander explained that no trees would be cut and there would be no change to the soil or the path already cleared to the dock. **Motion - The application meets the requirements of 15.14. (Motion by Nannen and seconded by Alexander; carried 5-0)**

15.15 Lighting - N/A see above.

15.16 Water Quality Protection - Carrier confirmed that no fuel or oil would be on the dock. **Motion - The applicant meets the requirements of 15.16 Water Quality Protection (Motion by Carrier and seconded by Carignan; carried 5-0)** Nannen asked if the body of water was at risk for development and Musson indicated this references lakes.

15.17 Hazardous, Special and Radioactive Materials - N/A see above.

15.18 Solid, Special and Hazardous Waste Disposal - The Board asked applicant Fischer where she would dispose of her solid waste and she indicated she does repairs in her yard and her trash goes to recycling once weekly. **Motion -The applicant meets the requirements of Section 15.18 (Motion by Carrier and seconded by Carignan; carried 5-0)**

15.19 Historic and Archaeological Resources - N/A see above.

15.20 Flood Plain Management - Musson indicated the Codes Office would review the project in terms of the Flood Plain Ordinance and the Board could place a condition on this. **Motion - The applicant meets the requirements of Section 15.20 contingent on the Codes Enforcement Office**

**verification that the application meets the Flood Plain Ordinance. (Motion by Carignan and seconded by Alexander; carried 5-0)**

15.21 Technical and Financial Capacity - Musson submitted to the Board a letter regarding Fischer's ' financial capacity. **Motion - The applicant meets the requirements of Section 15.21. (Motion by Alexander and seconded by Carignan; carried 5-0)**

Review of Section 13.4.7 Basic Land Use Ordinances - **Motion - The Application meets the standards of Section 13.4.7 of the Basic Land Use Ordinance. (Motion by Carignan and seconded by Alexander; carried 5-0)**

Chairman Alexander then advised the Fischer's that their project had been approved.

Public Comment - David Rugar spoke of his concerns as he was departing the meeting and it was explained that he had the right to appeal the decision within 40 days and he could talk to the Codes Office about this. He was also advised that the Selectmen would review this project as well.

**Review of Notices of Decision from July 16, 2003 Meeting**

Musson asked the Board to review Notices of Decision from the July 16, 2003 Board Meeting. The Board reviewed and discussed the Notices for applicant's Crooker, Sartini, and Surette and agreed the Notices were clear and noted a typo found on the Sartini notice.

**Board Discussion Section 10.4.2 - Resumption Prohibited -**

The Board indicated this had already been discussed earlier in the meeting.

**Planners Updates-**

Musson noted the upcoming November 17, 2003 Blaine House Conference on Natural Resource Based Industries and explained that all major natural resource based industry will be attending.

Musson also asked to set a date for a second workshop for comments on the draft Comprehensive Plan. The Planning Board agreed to a meeting the next week on **Wednesday, August 27<sup>th</sup> at 4:00 P.M.**

**Adjournment - Motion to adjourn at 9:10 P.M. (Motion by Alexander and seconded by Nannen; carried 5-0)**

Respectfully submitted,

Karen O'Connell, Recording Secretary